

OFFICE OF THE SHERIFF

COUNTY OF LOS ANGELES

HALL OF JUSTICE



JIM MCDONNELL, SHERIFF

August 16, 2016

Date of Department Hire 05/02/2002

Deputy Michael Fairbanks, #[redacted]

[redacted]

Dear Deputy Fairbanks:

On March 2, 2016, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under IAB File Number 2396385. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, Department executives determined that the recommended discipline is appropriate.

You are hereby notified that you are suspended without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department for a period of three (3) days effective August 29, 2016 through August 31, 2016.

An investigation under File Number IAB 2396385, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of the Department's Manual of Policy and Procedures, Section 3-01/050.10, Performance to Standards, on or about April 7, 2014, while on-duty, you failed to perform to standards established for your rank of a patrol deputy when you positioned yourself in an unsafe location and/or a position of disadvantage during a critical incident, lending itself to a potential crossfire scenario with additional on-scene personnel.

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference.

Prior to determining this disciplinary action, the Executive Force Review Committee and I have thoroughly reviewed the incident and your record with this Department.

You will hereby take notice that any future acts of misconduct may result in more severe disciplinary action.

You may appeal the Department's action in this matter pursuant to Rule 18.01(c) of the Civil Service Rules.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

JIM McDONNELL, SHERIFF

ORIGINAL SIGNED

Holly M. Perez, Captain
West Hollywood Station

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules {when applicable}.

HMP:JMR:jd

c: Advocacy Unit
Acting Chief John S. Benedict, North Patrol Division
Internal Affairs Bureau
Personnel Administration
Risk Management Bureau/unit Personnel File

I certify that on the date indicated below, I received the original of the attached **LETTER OF SUSPENSION** under File Number ***IAB 2396385*** as set forth in Section 18.01 of the Rules of the Los Angeles County Civil Service Commission.

8/16/16

DATE

MICHAEL FAIRBANKS, # [redacted]

I certify that on the date indicated below, I served the original of the attached letter of suspension on ***MICHAEL FAIRBANKS*** as set forth in Section 18.01 of the Rules of the Los Angeles County Civil Service Commission.

8/16/16

DATE

WITNESS SIGNATURE

PATRICK HUNTER

WITNESS PRINT

Please return this page along with Timekeeping Notification within two (2) business days to:

JENNIFER DEADMOND
INTERNAL AFFAIRS BUREAU
4900 S. EASTERN AVE. #100
CITY OF COMMERCE CA 90040
(323) 890-5327

761551N25A - SH-AD-32A (2/72)

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

DATE: August 18, 2016

OFFICE CORRESPONDENCE

FILE NO: IAB 2396385

FROM: TAMARA ALEXANDER, SERGEANT
INTERNAL AFFAIRS BUREAU

TO: KIMBERLY UNLAND, CAPTAIN
PERSONNEL ADMINISTRATION

ATTN: DOREEN GARCIA

SUBJECT: **DISCIPLINARY ACTION - SUSPENSION**

Please verify and/or adjust payroll records to reflect the following:

SUBJECT NAME:	**MICHAEL FAIRBANKS**
EMPLOYEE NO.:	[redacted]
ITEM NAME/NO.:	**DEPUTY, 2708A**
UNIT/DIVISION:	**RISK MANAGEMENT BUREAU/PROFESSIONAL STANDARDS DIVISION**
DATE OF LETTER:	**AUGUST 16, 2016**
DISCIPLINE:	**THREE (3) DAYS**
EFFECTIVE DATE(S):	**AUGUST 29, 2016 THROUGH AUGUST 31, 2016**

RECEIVED BY:

Alonso J. Pelayo 8/18/16

PERSONNEL (SIGNATURE) DATE

Alonso J. Pelayo

PERSONNEL (PRINT NAME)

***** PLEASE RETURN ALL SIGNED RECEIPTS TO JENNIFER DEADMOND @ 323-415-3577 OF INTERNAL AFFAIRS BUREAU AS SOON AS POSSIBLE****

TAA:JD:jd
761551N25A - SH-AD-32A (2/72)



OFFICE OF THE SHERIFF



COUNTY OF LOS ANGELES

HALL OF JUSTICE

JIM MCDONNELL, SHERIFF

August 24, 2016

Date of Department Hire 06/11/1998

Deputy Byron Holloway, #[redacted]

Dear Deputy Holloway:

On August 8, 2016, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under IAB File Number 2396385. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, Department executives determined that the recommended discipline is appropriate.

You are hereby notified that you are suspended without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department for a period of three (3) days effective August 29, 2016 through August 31, 2016.

An investigation under File Number IAB 2396385, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of the Department's Manual of Policy and Procedures, Section 3-01/050.10, Performance to Standards, on or about April 7, 2014, while on-duty, you failed to perform to standards established for your rank of a patrol deputy when you positioned yourself in an unsafe location and/or a position of disadvantage during a critical incident, lending itself to a potential crossfire scenario with additional on-scene personnel.

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference."

Prior to determining this disciplinary action, the Executive Force Review Committee and I have thoroughly reviewed the incident and your record with this Department.

You will hereby take notice that any future acts of misconduct may result in more severe disciplinary action.

You may appeal the Department's action in this matter pursuant to Rule 18.01(c) of the Civil Service Rules.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

JIM McDONNELL, SHERIFF

Original Signed

Holly M. Perez, Captain
West Hollywood Station

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules.

HMP:JMR:jp

c: Advocacy Unit
Jacques A. La Berge, Acting Assistant Sheriff, Patrol Operations
Internal Affairs Bureau
Personnel Administration
West Hollywood Station/unit Personnel File
Doreen Garcia, Pay and Leave Management

I certify that on the date indicated below, I received the original of the attached **LETTER OF INTENT** under File Number ***IAB 2396385.***

03-01-16

DATE

BYRON HOLLOWAY, # [redacted]

I certify that on the date indicated below, I served the original Letter of Intent to **BYRON HOLLOWAY.**

3/1/16

DATE

WITNESS SIGNATURE

SERGIO ALOMA, LT.

WITNESS PRINT

Please return this page within two (2) business days to:

VIRGINIA VASQUEZ
INTERNAL AFFAIRS BUREAU
4900 S. EASTERN AVE. #100
COMMERCE CA 90040
(323) 890-5314

761551N25A - SH-AD-32A (2/72)

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

DATE: August 31, 2016

OFFICE CORRESPONDENCE

FILE NO **IAB 2396385**

FROM: TAMARA ALEXANDER, SGT.
INTERNAL AFFAIRS BUREAU

TO: KIMBERLY L. UNLAND, CAPTAIN
PERSONNEL ADMINISTRATION

ATTN: DOREEN GARCIA

SUBJECT: **DISCIPLINARY ACTION - SUSPENSION**

Please verify and/or adjust payroll records to reflect the following:

SUBJECT NAME:	**BYRON HOLLOWAY**
EMPLOYEE NO.:	[redacted]
ITEM NAME/NO.:	**DEPUTY SHERIFF, ITEM #2708A**
UNIT/DIVISION:	**WEST HOLLYWOOD STATION/NORTH PATROL DIVISION**
DATE OF LETTER:	**AUGUST 24, 2016**
DISCIPLINE:	**THREE (3) DAYS**
EFFECTIVE DATE(S):	**AUGUST 29, 2016 THROUGH AUGUST 31, 2016**

RECEIVED BY:

Alonso J. Pelayo 8/31/16

PERSONNEL (SIGNATURE) DATE

Alonso J. Pelayo

PERSONNEL (PRINT NAME)

***** PLEASE RETURN ALL SIGNED RECEIPTS TO JACQUELINE POWELL OF INTERNAL AFFAIRS BUREAU AS SOON AS POSSIBLE****

TAA:JP:jp



OFFICE OF THE SHERIFF



COUNTY OF LOS ANGELES

HALL OF JUSTICE

JIM MCDONNELL, SHERIFF

March 1, 2016

Deputy Gerardo Valdivia, #[redacted]

[redacted]

Dear Deputy Valdivia:

You are hereby notified that it is the intention of the Sheriff's Department to suspend you without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department for a period of four (4) days.

An investigation under IAB File Number 2396385, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of the Department's Manual of Policy and Procedures, Section 3-01/050.10, Performance to Standards, on or about April 7, 2014, while on-duty, you failed to perform to standards established for your rank of a patrol deputy when you positioned yourself in an unsafe location and/or a position of disadvantage during a critical incident, lending itself to a potential crossfire scenario with additional on-scene personnel.

2. That in violation of the Department's Manual of Policy and Procedures Sections 3-01/030.10, Obedience to Laws, Regulations, and Orders (pertaining to 3-03/210.05, Revolvers/Semi-Automatic Pistols), on or about April 7, 2014, while on duty and upon being involved in a hit-shooting, it was discovered that your Department issued magazine was not loaded to the manufacturer's specified capacity.

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference.

Prior to determining this disciplinary action, the Executive Force Review Committee and I have thoroughly reviewed the incident and your record with this Department.

You have the right to grieve this disciplinary action within ten (10) business days of receipt of this letter. Your grievance procedures may be found in your classification's negotiated Memorandum of Understanding.

Failure to respond to this Letter of Intent within ten (10) business days will be considered a waiver of your right to grieve and will result in the imposition of this discipline indicated herein.

At the time of service of this letter of intent, you were provided with a copy of the material on which the discipline is based. If you are unable to access the information provided in the enclosed CD, you may contact Virginia Vasquez, of Internal Affairs Bureau, at (323) 890-5314, and arrange an appointment for assistance in this regard.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

JIM McDONNELL, SHERIFF

Original Signed

Holly M. Perez, Captain
West Hollywood Station

HMP:JMR:vv

cc: Advocacy Unit
Employee Relations Unit
Jacques A. La Berge, Chief, North Patrol Division
Internal Affairs Bureau
(File # IAB 2396385)

I certify that on the date indicated below, I received the original of the attached **LETTER OF INTENT** under File Number ***IAB 2396385.***

03-01-16

DATE

GERARDO VALDIVIA, # [redacted]

I certify that on the date indicated below, I served the original Letter of Intent to **GERARDO VALDIVIA.**

3-1-16

DATE

WITNESS SIGNATURE

SERGIO ALOMA

WITNESS PRINT

Please return this page within two (2) business days to:

VIRGINIA VASQUEZ
INTERNAL AFFAIRS BUREAU
4900 S. EASTERN AVE. #100
COMMERCE CA 90040
(323) 890-5314

761551N25A - SH-AD-32A (2/72)

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

DATE: AUGUST 17, 2016

OFFICE CORRESPONDENCE FILE NO: 2396385

FROM: TAMARA ALEXANDER, SERGEANT
INTERNAL AFFAIRS BUREAU

TO: KIMBERLY L. UNLAND, CAPTAIN
PERSONNEL ADMINISTRATION

ATTN: DOREEN GARCIA

SUBJECT: **DISCIPLINARY ACTION - SUSPENSION**

Please verify and/or adjust payroll records to reflect the following:

SUBJECT NAME:	**GERARDO VALDIVIA**
EMPLOYEE NO.:	**#[redacted]**
ITEM NAME/NO.:	**DEPUTY SHERIFF, #2708A**
UNIT/DIVISION:	**WEST HOLLYWOOD STATION**
DISCIPLINE:	**FOUR (4) DAYS**
EFFECTIVE DATE(S):	**AUGUST 29, 2016 THRU SEPTEMBER 1, 2016**

RECEIVED BY:

Alonso J. Pelayo 8/17/16

PERSONNEL (SIGNATURE) DATE

Alonso J. Pelayo

PERSONNEL (PRINT NAME)

***** PLEASE RETURN ALL SIGNED RECEIPTS TO PATTY CHOE OF INTERNAL AFFAIRS BUREAU AS SOON AS POSSIBLE *****

RIGHT FAX: 323-415-6598

TAA:PC:pc

761551N52A – SH-AD (11/90)

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

"A Tradition of Service"

OFFICE CORRESPONDENCE

DATE: February 26, 2016

FROM: KELLEY S. FRASER, COMMANDER
SOUTH PATROL DIVISION

TO: DONNIE MAULDIN, CAPTAIN
INTERNAL AFFAIRS BUREAU

SUBJECT: EXECUTIVE FORCE REVIEW COMMITTEE FINDINGS

Case Number:	SH2353685 / FO2376522
Incident:	Hit Shooting & Use of Force
Incident Date:	April 7, 2014
Unit:	West Hollywood Station
Suspect:	McDonald, Alexander MW/09-22-86
Involved Employees:	Sergeant Enrique Mandujan #[redacted] Deputy Michael Fairbanks #[redacted] Deputy Gerardo Valdivia #[redacted] Deputy Byron Holloway #[redacted] Deputy [redacted] #[redacted] Deputy [redacted] #[redacted] Deputy Lloyd McCullough #[redacted]
EFRC Date:	February 24, 2016

The Executive Force Review Committee (EFRC) consisting of Commanders Kelley S. Fraser, Ralph J. Webb and Eddie Rivero met and reviewed the above case.

FINDINGS:

The EFRC determined the use of deadly force was within department policy, however, the tactics used by Sergeant Mandujan and Deputies Fairbanks, Valdivia, Holloway, [redacted] and [redacted] were in violation of the department's policy.

The EFRC also determined that Deputy [redacted] was in violation of Performance to Standards as it relates the stun bag and that Deputy Valdivia was in violation of Performance to Standards as it relates to a weapon magazine being loaded to full capacity.

The EFRC also determined that Deputy McCullough was in violation of Performance to Standards as it relates to the proper handling of evidence, the preparation and completion of supplemental reports and the proper handling of victims and witnesses of critical incidents.

RECOMMENDATIONS:

The EFRC recommended that Sergeant Mandujan receive a 10 day suspension, Deputy McCullough a 5 day suspension, Deputy Valdivia a 4 day suspension, Deputies Holloway and Fairbanks a 3 day suspension, Deputy [redacted] a 2 day suspension and Deputy [redacted] a 1 day suspension. The EFRC also recommended that the involved personnel also attend Tactics and Survival, Enhanced Active Shooter Training.

KSF:JRB:jrb

DISPOSITION WORKSHEET

Re: IAB IV 2396385 / SH2353685 / FO2376522
Subject: Michael Fairbanks, #[redacted]
Investigator: Smeltzer
Advocate: Julia Valdes, Advocate

DISPOSITION OF CHARGES

The following potential charges were prepared by the Advocacy Unit. Please indicate your disposition of the potential charges, and put any additional sustained charges (with reference to the investigation) on attached sheet(s).

Potential Charge(s):

The evidence in this investigation supports the following charges:

1. That in violation of the Department's Manual of Policy and Procedures, Section 3-01/050.10, Performance to Standards, on or about April 7, 2014, while on-duty, Subject Fairbanks failed to perform to standards established for his rank of a patrol deputy when he positioned himself in an unsafe location and/or a position of disadvantage during a critical incident, lending itself to a potential crossfire scenario with additional on-scene personnel.

Evidence Reference:

____

Defenses/Conflicting Evidence:

____

Disposition:

__X__ **Charge founded as delineated**
_____ **Charge founded as modified**
_____ **Charge unresolved**
_____ **Charge unfounded**

Discipline Assessment

Review of Applicable Guidelines for discipline Section:

The Department's Guidelines for Discipline (Revised December 14, 2009) lists the following Analogous misconduct with associated disciplinary penalties:

Conduct	**Standard Discipline**
Performance to Standards	W/R to Discharge

Determination of Discipline:

Based upon the attached assessment of mitigating and aggravating factors, the following discipline has been determined to be appropriate. This discipline is subject to revision upon receipt of the subject's response of grievance.

_____ **Discharge**
_____ **Reduction in Rank**
__X__ **Suspension with loss of pay and benefits for __3__ days**
_____ **Written Reprimand**
_____ **No discipline**

Assessment of Mitigating and Aggravating Factors:

The following describe the mitigating and aggravating factors in the determining the discipline in this investigation. Those factors include:

Intent	Truthfulness
Past Performance	Severity of Infraction
Degree of Culpability	Acceptance of Responsibility
Disciplinary History	Other Factors

Management has considered the subject's performance, which is documented in the Subject's Department personnel file, and those documents not contained in that file which are attached to the disposition worksheet.

DISPOSITION WORKSHEET

Re: IAB IV 2396385 / SH2353685 / FO2376522
Subject: Byron Holloway, #[redacted]
Investigator: Smeltzer
Advocate: Julia Valdes, Advocate

DISPOSITION OF CHARGES

The following potential charges were prepared by the Advocacy Unit. Please indicate your disposition of the potential charges, and put any additional sustained charges (with reference to the investigation) on attached sheet(s).

Potential Charge(s):

The evidence in this investigation supports the following charges:

1. That in violation of the Department's Manual of Policy and Procedures, Section 3-01/050.10, Performance to Standards, on or about April 7, 2014, while on-duty, Subject Holloway failed to perform to standards established for his rank of a patrol deputy when he positioned himself in an unsafe location and/or a position of disadvantage during a critical incident, lending itself to a potential crossfire scenario with additional on-scene personnel.

Evidence Reference:

____

Defenses/Conflicting Evidence:

____

Disposition:

__X__ **Charge founded as delineated**
_____ **Charge founded as modified**
_____ **Charge unresolved**
_____ **Charge unfounded**

Discipline Assessment

Review of Applicable Guidelines for discipline Section:

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_____ **Reduction in Rank**
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_____ **Written Reprimand**
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Assessment of Mitigating and Aggravating Factors:

The following describe the mitigating and aggravating factors in the determining the discipline in this investigation. Those factors include:

Intent	Truthfulness
Past Performance	Severity of Infraction
Degree of Culpability	Acceptance of Responsibility
Disciplinary History	Other Factors

Management has considered the subject's performance, which is documented in the Subject's Department personnel file, and those documents not contained in that file which are attached to the disposition worksheet.

DISPOSITION WORKSHEET

Re:	IAB IV 2396385 / SH2353685 / FO2376522
Subject:	Gerardo Valdivia, #[redacted]
Investigator:	Smeltzer
Advocate:	Julia Valdes, Advocate

DISPOSITION OF CHARGES

The following potential charges were prepared by the Advocacy Unit. Please indicate your disposition of the potential charges, and put any additional sustained charges (with reference to the investigation) on attached sheet(s).

Potential Charge(s):

The evidence in this investigation supports the following charges:

1. That in violation of the Department's Manual of Policy and Procedures, Section 3-01/050.10, Performance to Standards, on or about April 7, 2014, while on-duty, Subject Valdivia failed to perform to standards established for his rank of a patrol deputy when he positioned himself in an unsafe location and/or a position of disadvantage during a critical incident, lending itself to a potential crossfire scenario with additional on-scene personnel.

2. That in violation of the Department's Manual of Policy and Procedures Sections 3-01/030.10, Obedience to Laws, Regulations, and Orders (pertaining to 3-03/210.05, Revolvers/Semi-Automatic Pistols), on or about April 7, 2014, while on duty and upon being involved in a hit-shooting, it was discovered that Subject Valdivia's Department issued magazine was not loaded to the manufacturer's specified capacity.

Evidence Reference:

____

Defenses/Conflicting Evidence:

____

Disposition:

__X__ **Charge founded as delineated**
_____ **Charge founded as modified**
_____ **Charge unresolved**
_____ **Charge unfounded**

Discipline Assessment

Review of Applicable Guidelines for discipline Section:

The Department's Guidelines for Discipline (Revised December 14, 2009) lists the following Analogous misconduct with associated disciplinary penalties:

Conduct	Standard Discipline
Performance to Standards	W/R to Discharge
Obedience to Laws, Regulations, and Orders	W/R to Discharge

Determination of Discipline:

Based upon the attached assessment of mitigating and aggravating factors, the following discipline has been determined to be appropriate. This discipline is subject to revision upon receipt of the subject's response of grievance.

_____ **Discharge**
_____ **Reduction in Rank**
__X__ **Suspension with loss of pay and benefits for __4__ days**
_____ **Written Reprimand**
_____ **No discipline**

Assessment of Mitigating and Aggravating Factors:

The following describe the mitigating and aggravating factors in the determining the discipline in this investigation. Those factors include:

Intent	Truthfulness
Past Performance	Severity of Infraction
Degree of Culpability	Acceptance of Responsibility
Disciplinary History	Other Factors

Management has considered the subject's performance, which is documented in the Subject's Department personnel file, and those documents not contained in that file which are attached to the disposition worksheet.

TABLE OF CONTENTS

SH 2353685 / FO 2376522

EXHIBITS

A	Homicide Investigation Book, URN 014-01753-0977-013, Volumes I-VII
B	District Attorney Letter of Opinion, dated March 6, 2015
C	Seven photographs of West Hollywood Station Stunbag #4
D	Incomplete supplemental report, written by Deputy Lloyd McCullough, URN 014-01753-0977-052, with fax date of November 11, 2015
E	Four (4) crime scene sketches, created by Forensic Identification Specialist Martin Mutac
F	Laboratory Examination Report, written by Firearms Examiner Deputy Ivan Chavez
G	Deputy Daily Worksheet, Unit 92A/E, dated April 8, 2014
H	Deputy Daily Worksheet, Unit 93A/E, dated April 8, 2014
I	Deputy Daily Worksheet, Unit 94A/P, dated April 7, 2014
J	Deputy Daily Worksheet, Unit 93K1/P, dated April 7, 2014
K	Deputy Daily Worksheet, Unit 90S/E, dated April 8, 2014
L	West Hollywood Sheriff's Station in-services, dated April 7, 2014, PM Shift and April 8, 2014, EM shift
M	Email from Sergeant Charles Braden, dated December 9, 2015
N	Email from Sergeant Robert Martindale, dated January 20, 2016
O	Five (5) photographs of a "Patrol Eyes" body camera
P	Deputy Daily Worksheet, Unit 94F/P, dated April 7, 2014
Q	Deputy Daily Worksheet, Unit 91F/P, dated April 7, 2014
R	Incomplete supplemental report, written by Deputy Lloyd McCullough, URN 014-01753-0977-052
S	Email from Sergeant Charles Braden, dated January 19, 2016

T One (1) DVD of video recorded interview of Witness [redacted] with transcript

U One (1) CD of video recorded interview of Suspect Alexander McDonald

V One (1) CD containing sixteen (16) deposition transcripts

W One (1) DVD containing digital crime scene photographs

X One (1) DVD containing six (6) video recording files, created by Witness [redacted]

Y One (1) DVD containing four (4) video recorded files of interviews with Witnesses [redacted] [redacted] and [redacted]

W Suspect Alexander McDonald's Los Angeles County Jail medical records, form April 7, 2014, through June 1, 2014

MISCELLANEOUS DOCUMENTS

Admonition forms

Incident Information

URN: 014-01753-0977-013	Date: 04-07-2014	Time: 2130 hours	
Location: [redacted] Palm Avenue, Unit #[redacted]	City or Station: West Hollywood		
Bureau/Station/Facility: West Hollywood Station	Admin. Investigation: ○ YES ◉ NO		
Type of Force: Category 3 / Deputy Involved Shooting-Person Deceased / Personal Weapons-Kicks			
Incident Category: ○1 ○2 ◉3	Deputy Injury: ◉YES ○ NO	Suspect Injury ◉YES ○ NO	
☒ Call	☐ Observation	☐ Detail	☐ Foot Pursuit ☐ Vehicle Pursuit
IAB Notified: ◉YES ○ NO	Person Notified: Lt. David Flores	Emp: [redacted]	IAB Roll Out ◉YES ○ NO

Involved Employee

E 1

Employee #: [redacted]	Last Name: Fairbanks	First Name: Michael	Middle I.: A.	Rank: B-1	
Sex: ◉ M ○ F	Race: W	Height: 602	Weight: 270	Age: [redacted]	Shift: ◉ EM ○ Day ○ PM; ◉ Regular Shift ○ OT Shift ○ Off Duty
Unit of Assignment: West Hollywood Station	Work Assignment (Unit #, Module, etc.): Unit #92A				
Individual Force Used: Shot / Kicks / Resisted Handcuffing / Control Techniques	○ Directed ○ Rescue ○ Medical Assist	Individual Category ○1 ○2 ◉3			
☒ Injured ☐ Treated ☐ Admitted	Facility: N/A	Coroner Case #: N/A			

E 2

Employee #: [redacted]	Last Name: Valdivia	First Name: Gerardo	Middle I.: --	Rank: DSG	
Sex: ◉ M ○ F	Race: H	Height: 511	Weight: 200	Age: [redacted]	Shift: ◉ EM ○ Day ○ PM; ◉ Regular Shift ○ OT Shift ○ Off Duty
Unit of Assignment: West Hollywood Station	Work Assignment (Unit #, Module, etc.): Unit #93A				
Individual Force Used: Shot / Kicks / Punches / Resisted Handcuffing Shot	○ Directed ○ Rescue ○ Medical Assist	Individual Category ○1 ○2 ◉3			
☒ Injured ☐ Treated ☐ Admitted	Facility: N/A	Coroner Case #: N/A			

E 3

Employee #: [redacted]	Last Name: Holloway	First Name: Byron	Middle I.: G.	Rank: DSG	
Sex: ◉ M ○ F	Race: B	Height: 600	Weight: 185	Age: [redacted]	Shift: ○ EM ○ Day ◉ PM; ◉ Regular Shift ○ OT Shift ○ Off Duty
Unit of Assignment: West Hollywood Station	Work Assignment (Unit #, Module, etc.): Unit #94A				
Individual Force Used: Shot	○ Directed ○ Rescue ○ Medical Assist	Individual Category ○1 ○2 ◉3			
☐ Injured ☐ Treated ☐ Admitted	Facility:	Coroner Case #: N/A			

☒ Additional Involved Employees

On Duty Supervisor

Emp. #	Last Name	First Name	Middle I.	Rank	Present	Witness to Incident
[redacted]	Mandujan	Enrique	--	Sgt.	YES ◉ NO ○	YES ◉ NO ○

Supervisor Completing Investigation

Emp. #	Last Name	First Name	Middle I.	Rank	Present	Witness to Incident
[redacted]	Smeltzer	Chad	E.	Sgt.	YES ○ NO ◉	YES ○ NO ◉

Watch Commander / Supervising Lieutenant

Emp. #	Last Name	First Name	Middle I.	Rank
[redacted]	Nash	William	G.	Lt.

William G. Nash [signature] 2/2/16
Watch Commander / Supervising Lieutenant's **Signature:** Date Copy Provided to Employee by: Emp #:

A/Captain Sergio A. Aloma
Unit Commander **(Print Name)** Unit Commander's **Signature:** Emp #: Date

DISCOVERY Use Only
FO# 2376522

☐ PPI REVIEW COMPLETED

Original: Discovery Unit
Copy: Unit Commander

Supervisor's Report on Use of Force
INVOLVED EMPLOYEE - Continuation

0 1 4 - 0 1 7 5 3 - 0 9 7 7 - 0 1 3

Involved Employee

E 4

Employee #	Last Name	First Name	Middle I.	Rank
[redacted]	[redacted]	[redacted]	--	DSG

Sex	Race	Height	Weight	Age	Shift	
○ M ◉ F	H	503	150	[redacted]	◉ EM ○ Day ○ PM	◉ Regular Shift ○ OT Shift ○ Off Duty

Unit of Assignment: West Hollywood Station

Work Assignment (Unit #, Module, etc.): Unit #92A

Individual Force Used: Stunbag / Kick / Punches / Control Techniques

○ Directed ○ Rescue ○ Medical Assist

Individual Category: ○ 1 ◉ 2 ○ 3

☐ Injured ☐ Treated ☐ Admitted Facility: N/A

Coroner Case #: N/A

E 5

Employee #	Last Name	First Name	Middle I.	Rank
[redacted]	[redacted]	[redacted]	--	DSG

Sex	Race	Height	Weight	Age	Shift	
○ M ◉ F	W	505	130	[redacted]	○ EM ○ Day ◉ PM	◉ Regular Shift ○ OT Shift ○ Off Duty

Unit of Assignment: West Hollywood Station

Work Assignment (Unit #, Module, etc.): Unit #93K1

Individual Force Used: Control Techniques

○ Directed ○ Rescue ○ Medical Assist

Individual Category: ○ 1 ◉ 2 ○ 3

☐ Injured ☐ Treated ☐ Admitted Facility: N/A

Coroner Case #: N/A

E__

Employee #	Last Name	First Name	Middle I.	Rank

Sex	Race	Height	Weight	Age	Shift	
○ M ○ F					○ EM ○ Day ○ PM	○ Regular Shift ○ OT Shift ○ Off Duty

Unit of Assignment:

Work Assignment (Unit #, Module, etc.):

Individual Force Used:

○ Directed ○ Rescue ○ Medical Assist

Individual Category: ○ 1 ○ 2 ○ 3

☐ Injured ☐ Treated ☐ Admitted Facility:

Coroner Case #:

E__

Employee #	Last Name	First Name	Middle I.	Rank

Sex	Race	Height	Weight	Age	Shift	
○ M ○ F					○ EM ○ Day ○ PM	○ Regular Shift ○ OT Shift ○ Off Duty

Unit of Assignment:

Work Assignment (Unit #, Module, etc.):

Individual Force Used:

○ Directed ○ Rescue ○ Medical Assist

Individual Category: ○ 1 ○ 2 ○ 3

☐ Injured ☐ Treated ☐ Admitted Facility:

Coroner Case #:

E__

Employee #	Last Name	First Name	Middle I.	Rank

Sex	Race	Height	Weight	Age	Shift	
○ M ○ F					○ EM ○ Day ○ PM	○ Regular Shift ○ OT Shift ○ Off Duty

Unit of Assignment:

Work Assignment (Unit #, Module, etc.):

Individual Force Used:

○ Directed ○ Rescue ○ Medical Assist

Individual Category: ○ 1 ○ 2 ○ 3

☐ Injured ☐ Treated ☐ Admitted Facility:

Coroner Case #:

Supervisor's Report on Use of Force
SUSPECT INFORMATION

014 - 01753 - 0977 - 013

Suspect Information

S 1

Last Name [redacted] | First Name [redacted] | Middle Name | Armed? Select: Not Armed

AKA Last Name | First Name | Middle Name

Sex: ◉ Male ○ Female | Race: W | Age: 30 | Height: [redacted] | Weight [redacted] | D.O.B. [redacted] | Phone #1: ◉ H ○ W ○ C [redacted] | Phone #2: ○ H ○ W ○ C [redacted]

Street Address: [redacted] | City: [redacted] | State & Zip Code: [redacted]

Booking #: N/A | Primary Charge Code: N/A | Secondary Charge Code: N/A | [redacted] Criminal History

Treated on Scene? ◉ YES ○ NO Name: L.A. County Fire | Unit: Engine 7 | Phone #: 911

Hospital Admission? ☒ Rec'd Treatment At: Cedars-Sinai | Coroner Case #: 2014-0247 | Mental History ☐ User's guide provides direction on this entry

By: Dr. Fishkin | Address: 8700 Beverly Bl., Los Angeles 90048 | Phone #: 310-423-3277

Under Influence: ○ YES ◉ NO | Substance: CNS Stimulant | 5150 a factor in force? ○ YES ◉ NO User's guide provides direction on this entry

Date: N/A | Time: N/A | ☐ Audiotape: ☐ Videotape: ☒ Photos of Injuries: ☐ ADMITS HEARING ANNOUNCEMENTS

Suspect Information

S 2

Last Name McDonald | First Name Alexander | Middle Name Tor | Armed? Select: Not Armed

AKA Last Name | First Name | Middle Name

Sex: ◉ Male ○ Female | Race: W | Age: 27 | Height: 601 | D.O.B. 09/22/86 | Weight: 170 | Phone #1: ○ H ○ W ◉ C [redacted] | Phone #2: ○ H ○ W ○ C [redacted]

Street Address: [redacted] | City: [redacted] | State & Zip Code: [redacted]

Booking #: 3919063 | Primary Charge Code: 187 PC | Secondary Charge Code: 206 PC | [redacted] Criminal History

Treated on Scene? ◉ YES ○ NO By: L.A. County Fire | Unit: Engine 7 | Phone #: 911

Hospital Admission? ☐ Rec'd Treatment At: Cedars-Sinai | Coroner Case #: -- | Mental History ☐ User's guide provides direction on this entry

By: Dr. Sam Torbati | Address: 8700 Beverly Bl., Los Angeles 90048 | Phone #: 310-423-3277

Under Influence: ◉ YES ○ NO | Substance: Marijuana | 5150 a factor in force? ◉ YES ○ NO User's guide provides direction on this entry

Date: 04/08/2014 | Time: 11:46 | ☒ Audiotape: ☒ Videotape: ☒ Photos of Injuries: ☐ ADMITS HEARING ANNOUNCEMENTS

Suspect Information

S __

Last Name | First Name | Middle Name | Armed? Select

AKA Last Name | First Name | Middle Name

Sex: ○ Male ○ Female | Race: | Age: | Height: | D.O.B. | Weight: | Phone #1: ○ H ○ W ◉ C | Phone #2: ○ H ○ W ○ C

Street Address: | City: | State & Zip Code:

Booking #: | Primary Charge Code: | Secondary Charge Code: | ☐ Criminal History

Treated on Scene? ○ YES ○ NO By: | Unit: | Phone #:

Hospital Admission? ☐ Rec'd Treatment At: | Coroner Case #: | Mental History ☐ User's guide provides direction on this entry

By: | Address: | Phone #:

Under Influence: ○ YES ○ NO | Substance: Combination | 5150 a factor in force? ○ YES ◉ NO User's guide provides direction on this entry

Date: | Time: | ☐ Audiotape: ☐ Videotape: ☐ Photos of Injuries: ☐ ADMITS HEARING ANNOUNCEMENTS

☐ **Additional Suspects Involved**

Supervisor's Report on Use of Force
EMPLOYEE / NON-EMPLOYEE INFORMATION

0 1 4 - 0 1 7 5 3 - 0 9 7 7 - 0 1 3

Employee Witnesses

Emp. #	Last Name	First Name	Middle Name
[redacted]	Mandujan	Enrique	--

Unit of Assignment:	Work Assignment (Unit #, Module, etc.):	Shift:	
West Hollywood Station	Unit 90S	(●) EM ( ) Day ( ) PM	(●) Regular ( ) OT ( ) Off Duty

Emp. #	Last Name	First Name	Middle Name

Unit of Assignment:	Work Assignment (Unit #, Module, etc.):	Shift:	
		( ) EM ( ) Day ( ) PM	( ) Regular ( ) OT ( ) Off Duty

Emp. #	Last Name	First Name	Middle Name

Unit of Assignment:	Work Assignment (Unit #, Module, etc.):	Shift:	
		( ) EM ( ) Day ( ) PM	( ) Regular ( ) OT ( ) Off Duty

Non-Employee Witnesses

Last Name	First Name	Middle Name	Age	D.O.B.
[redacted]	[redacted]	[redacted]	24	[redacted]

Street Address	City	Zip Code	Phone #1	Phone #2
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Last Name	First Name	Middle Name	Age	D.O.B.

Street Address	City	Zip Code	Phone #1	Phone #2

Last Name	First Name	Middle Name	Age	D.O.B.

Street Address	City	Zip Code	Phone #1	Phone #2

Last Name	First Name	Middle Name	Age	D.O.B.

Street Address	City	Zip Code	Phone #1	Phone #2

Last Name	First Name	Middle Name	Age	D.O.B.

Street Address	City	Zip Code	Phone #1	Phone #2

Last Name	First Name	Middle Name	Age	D.O.B.

Street Address	City	Zip Code	Phone #1	Phone #2

Last Name	First Name	Middle Name	Age	D.O.B.

Street Address	City	Zip Code	Phone #1	Phone #2

Last Name	First Name	Middle Name	Age	D.O.B.

Street Address	City	Zip Code	Phone #1	Phone #2

☐ **Additional Witness**

Method

(AW) Arwen
(BC) Baton: (Control)
(BI) Baton: (Impact)
(BF) Bodily Fluids
(CN) Canine
(CR) Carotid Restraint
(CH) Choke Hold
(CT) Control Holds: (Control Techniques)
(TT) Control Holds: (Team Takedown)
(TD) Control Holds: (Takedown)
(CE) Chemical
(OC) Chemical Agents (OC Spray)
(TG) Chemical Agents (Tear Gas)
(EX) Explosives
(FH) Firearm (Handgun)
(FR) Firearm (Rifle)
(FS) Firearm (Shotgun)
(FO) Firearm (Other)
(FB) Flashbang
(FL) Flashlight
(OE) Other Weapon: Edged
(OV) Other Weapon: Vehicle
(OB) Other Weapon: Blunt Object
(OO) Other Weapon: Other
(PK) Personal Weapon: Feet/Leg: (Kick)
(PS) Personal Weapon: Feet/Leg: (Sweep)
(PH) Personal Weapon (Hand/Arm)
(PP) Personal Weapon (Push)
(PO) Personal Weapon (Other)
(RS) Resistance
(RO) Restraint Device (Other)
(RH) Restraint Device (Handcuffs)
(HB) Restraint Device: Hobble (Legs Only)
(TP) Restraint Device: Hobble (TARP)
(RE) Restraint Device: REACT Belt
(SP) Sap
(SH) Shield
(IR) Less Lethal Impact Round (other)
(SB) Sting Ball
(ST) Stun Bag
(TR) Taser
(UC) Uncooperative
(HR) High Risk

Type of Injury

(AB) Abrasion
(BR) Bruise
(BU) Burn
(CP) Complaint of Pain
(CO) Concussion
(DH) Death
(DI) Dislocation
(DB) Dog Bite
(FR) Fractures
(GS) Gunshot
(HB) Human Bite
(LC) Lacerations
(ND) Nerve Damage
(OD) Organ Damage
(PA) Paralysis
(PW) Puncture Wound
(SD) Soft Tissue Damage
(ST) Sprain/Twists
(UN) Unconscious
(RM) Refused Med Treatment
(NN) NONE

Body Part Involved

(AD) Abdomen
(AK) Ankle
(AR) Arm
(BK) Back
(BT) Buttocks
(CH) Chest
(EL) Elbow
(FA) Face
(FE) Feet
(FI) Fingers
(GE) Genitals
(GR) Groin
(HD) Hands
(HE) Head
(HI) Hip
(IN) Internal
(KN) Knees
(LE) Leg
(NK) Neck
(NO) Nose
(SH) Shoulder
(WR) Wrist

FORCE USED BY		FORCE USED AGAINST		Method (Code)	Type of Injury (Code)	Body Part (Code)
Name	E# or S#	Name	E# or S#			
[redacted]	S#1	Fairbanks, Valdivia,	E#1-#5	UC,RS,	NN	NN
		Holloway, [redacted] &		HR	NN	NN
		[redacted]			NN	NN
Fairbanks & Holloway	E#1&#3		S#1	FH	GS	AB/AR
Valdivia	E#2		S#1	FH	GS	CH
[redacted]	E#4		S#1	ST	BR	LE
McDonald	S#1	Fairbanks	E#1	UC,RS,	FR	FE
				HR		
McDonald	S#1	Valdivia	E#2	UC,RS,	CP	BK
				HR		
McDonald	S#1	[redacted] & [redacted]	E#4-#5	UC, RS,	NN	NN
				HR		
Fairbanks & Valdivia	E#1&#2	McDonald	S#2	PK	AB/BR	HE
[redacted]	E#4	McDonald	S#2	PK	AB/BR	BK
Fairbanks, Valdivia,	E#1-#2	McDonald	S#2	NN	NN	NN
[redacted] & [redacted]	E#4-5					
Valdivia & [redacted]	E#2&#4	McDonald	S#2	PH	AB	BK
Fairbanks, Valdivia,	E#1-#2	McDonald	S#2	CT/RH	NN	NN
[redacted] & [redacted]	E#4-#5					



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

March 6, 2015

Captain Rod Kusch
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. File #14-0227
L.A.S.D. File #014-01753-0977-013

Dear Captain Kusch:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 7, 2014, fatal shooting of [redacted] and non-fatal shooting of [redacted] by Los Angeles County Sheriff's Department (LASD) Deputies Gerardo Valdivia, Byron Holloway, and Michael Fairbanks. It is our conclusion that there is insufficient evidence to prove beyond a reasonable doubt that the deputies did not act in lawful defense of others and self-defense.

The District Attorney's Command Center was notified of this shooting on April 7, 2014, at approximately 11:00 p.m. The District Attorney Response Team, comprised of Deputy District Attorney Arisa Mattson and District Attorney Senior Investigator Joseph Miraflor, responded and was given a briefing and walk-through of the scene by Lieutenant David Coleman.

The following analysis is based upon reports prepared by the LASD, submitted to this office by LASD Homicide Investigators Sergeant Robert Martindale and Detective Q. Rodriguez. No compelled statements were considered in this analysis.

FACTUAL ANALYSIS

Incident in Apartment #[redacted]

[redacted] Statement:

On April 7, 2014, at approximately 8:45 p.m., [redacted] was in her apartment at [redacted] apartment #[redacted] in the City of [redacted] when she heard a knock at her front door. When [redacted] looked through the peephole of the front door it was dark, as though the person on the other side of the door completely blocked the hole with their finger. Believing it was one of her two roommates playing a joke, she opened the door. Instead, it was Alex McDonald, her [redacted] who lived in apartment #[redacted].

[redacted] did not invite McDonald inside but he walked into her apartment anyway. McDonald was acting strange and repeatedly asked her if she "was a good person." [redacted] became fearful of McDonald's bizarre and aggressive behavior. She thought McDonald was high on some form of controlled substance but she did not know which one.[1]

A few minutes later, one of [redacted] came home from work. McDonald also asked [redacted] if she was a good person. Suddenly, McDonald produced a knife and walked towards [redacted] fled the apartment as McDonald chased after her.

[redacted] shut the front door and called 9-1-1. She reported that a man with a knife, wearing a black shirt and jeans, chased [redacted] out of their apartment. She told the 9-1-1 operator that she was scared for her life [redacted] did not know where [redacted] and McDonald were.

Sometime later, LASD deputies entered her apartment. [redacted] was hiding in her bedroom and crying. She came out when the deputies announced their presence. The deputies escorted her out of the apartment complex after they confirmed that nobody else was in her apartment.

[redacted] Statement:

On April 7, 2014, shortly after 8:45 p.m., [redacted] came home from work and noticed her front door was ajar. When she stepped inside, she saw one of her [redacted] and her [redacted] McDonald, standing in the kitchen of her apartment. McDonald mentioned that [redacted] and [redacted] had a lot of friends and repeatedly asked them if they were good people.

[redacted] told McDonald that he was making her very nervous and asked McDonald to leave their apartment. McDonald did not comply. [redacted] dialed 9-1-1 on her cell phone. Suddenly, McDonald produced a knife and walked towards [redacted]

In fear for her life, [redacted] ran out of her apartment, down the hallway and down one flight of stairs. McDonald chased [redacted] through the hallway but did not follow her down the stairs. She was on the phone with the 9-1-1 operator as she ran outside the apartment complex and continued to talk to the operator until she saw LASD patrol cars in the middle of the street.

[redacted] flagged down several LASD deputies. She told them that a man with a knife was inside the complex on the [redacted] floor and her [redacted] was inside apartment # [redacted] handed a deputy her apartment keys so that they could gain access to her apartment to check on [redacted] welfare.

[redacted] told the deputies that McDonald was the man with a knife. She said he was her [redacted] and lived in unit # [redacted] with two [redacted] a male named [redacted] and a female

---

[1] [redacted] had been to parties in apartment # [redacted] with McDonald and his two [redacted] a few times within the year. McDonald was always very quiet and shy. However, [redacted] noticed McDonald's behavior was different in the last two weeks. [redacted] believed McDonald was abusing drugs, which made him more aggressive.

[2] Neither [redacted] nor [redacted] saw where McDonald retrieved the knife. During the investigation, detectives found a block of kitchen knives in [redacted] and [redacted] kitchen. There was one knife missing, which matched the brand and size of McDonald's knife. McDonald later told detectives he took a knife from apartment # [redacted]

named [redacted] told deputies that McDonald was wearing a black shirt and jeans.

Incident in Apartment #[redacted]

[redacted] Statement[3]:

[redacted] lived in apartment #[redacted] at [redacted] with two [redacted] McDonald and [redacted] He had just returned home from a trip to New York on the morning of April 7, 2014. Later that day, [redacted] missed a call from his friend, [redacted] eventually talked to [redacted] who told him that she was hanging out with McDonald that day when he began acting strange and aggressive. [redacted] told [redacted] she was so scared that she jumped out of McDonald's vehicle and ran to a nearby restaurant and hid from him. [redacted] said she needed someone to pick her up and take her home.

[redacted] and his friend [redacted] went to the restaurant to pick up [redacted] but she was gone. They were driving back to [redacted] apartment when [redacted] invited another friend, [redacted] to meet back at [redacted] apartment to watch television and hang out. [redacted] lived in the [redacted] complex on the [redacted] floor.

At 9:00 p.m., [redacted] and [redacted] were watching television in the living room. [redacted] other [redacted] was in her bedroom with her bedroom door closed. [redacted] had not seen McDonald since returning from New York.

Suddenly, McDonald jumped onto the second story balcony of the apartment and walked into the living room. [redacted] noticed that McDonald was "freaking out." McDonald told everyone inside that he was being followed. McDonald asked everyone if they were good people. [redacted] and [redacted] all responded that they were.

McDonald closed the balcony door and all the blinds in the living room. He told [redacted] to send text messages to people in Seattle. When [redacted] refused and said he did not know what McDonald was talking about, McDonald grabbed a cell phone out of [redacted] hand. When [redacted] approached McDonald to take back his phone, McDonald produced a knife and pointed it at [redacted] described the knife as a kitchen style knife with a long blade and black handle. McDonald told [redacted] to sit down, which he did. McDonald took [redacted] cell phone and [redacted] laptop computer.

[redacted] had never seen McDonald behave like this in the two years he [redacted] and [redacted] McDonald took off his shirt and repeatedly said he was being followed. McDonald told [redacted] and [redacted] that he did not know them and that they were all "actors."

---

[3] [redacted] was interviewed in the Intensive Care Unit (ICU) at Cedars Sinai Medical Hospital on April 8, 2014, at 4:20 a.m. He was medicated but alert. He received medical attention for a stab wound to his neck and a gunshot wound to his left thigh.

think I'm being followed." [redacted] said McDonald sounded as though he was under the influence of some controlled substance.

McDonald then closed the blinds and turned off the apartment's lights. [redacted] asked McDonald if he was in trouble and if there was anything they could do to help. McDonald replied, "I might be in trouble. Be quiet about it!" McDonald turned off the television and locked the front door. McDonald asked [redacted] if he could text message someone in Seattle. When [redacted] responded no, McDonald snatched [redacted] cell phone and went into the kitchen. McDonald returned to the living room from the kitchen holding a golf club. McDonald then lifted up his shirt and pulled out a knife from his pants. [redacted] described the knife as an eight-inch serrated knife with a black handle. McDonald pointed the knife at [redacted] and ordered him to sit down.

[redacted] said McDonald paced the living room and repeatedly asked them if they were "good guys." Eventually, McDonald took [redacted] laptop computer and [redacted] cell phone.

At some point, [redacted] heard a helicopter, police sirens, and voices outside the apartment. During this time, McDonald pointed the knife and asked them all, "Who wants to die tonight?" McDonald also said, "We're all going to die tonight."

[redacted] heard LASD deputies bang on the front door. McDonald turned to [redacted] and said, "I know you the least; I'm going to stab you first!" [redacted] thought McDonald was going to kill him. McDonald began jabbing [redacted] multiple times in his right thigh with the knife while saying, "If anyone talks, I'm going to stab you!" [redacted] said [redacted] begged McDonald to stop but McDonald ignored him.

[redacted] who was in her bedroom this whole time, suddenly opened her bedroom door. McDonald was holding the knife. McDonald ordered her to go back inside her room and instructed her to text people outside that, "everything was fine and they could leave."

McDonald told [redacted] that he wanted to cut out [redacted] tattoos. After poking [redacted] multiple times on his right thigh, McDonald stabbed him in the right thigh. McDonald yelled to [redacted] through her closed bedroom door that if she did not tell the police to go away, he would stab [redacted] in the stomach on the "count of three." [redacted] said McDonald began counting and when he said "two," [redacted] grabbed McDonald's arm and saw [redacted] and [redacted] also attempt to grab McDonald.

[redacted] said everything after that happened quickly. He and McDonald were on the floor. [redacted] saw the knife was broken and laying on the floor. McDonald was holding the handle. When [redacted] realized McDonald did not have the blade, [redacted] kicked him in the stomach and a physical struggle ensued. McDonald eventually bit [redacted] right thumb. McDonald had his hands around [redacted] throat, choking him.

While [redacted] continued fighting with McDonald on the floor, [redacted] saw [redacted] run towards the front door to unlock it. He did not see where [redacted] went [redacted] then heard three

gunshots. Within ten seconds of the shots, the deputies were in the apartment and they pulled McDonald off him and stopped the attack.[6]

[redacted] Statement:

[redacted] returned home to apartment #[redacted] from work on April 7, 2014, at approximately 7:00 p.m. Nobody was home at the time but one of her [redacted] arrived home a short time later with [redacted] his friend from Australia. [redacted] and [redacted] left the apartment. At approximately 8:00 p.m. [redacted] went to her bedroom and closed the door.

She eventually heard people in the living room talking. She assumed it was [redacted] and [redacted] returning from dinner. However, she heard other noises, like the sound of the blinds and balcony door closing. She heard a loud noise, so she opened the door and asked what happened.

When she opened her door, she saw McDonald standing in the middle of the living room with his back to her. McDonald was facing three males who were sitting on a couch in front of him. McDonald turned around and she saw he was holding a large knife in his right hand. McDonald pointed the knife at her and said, "Get the fuck back in your room!" Before she closed the door, she could see that one of the males seated on the couch was [redacted] looked scared and very serious as he also told her to go back to her room and stay there.

Fearing for her and her [redacted] safety, she went into her bedroom and locked the door. She did not call 9-1-1 for fear that McDonald would hear her. Instead, she text messaged 9-1-1 multiple times. However, the texts did not go through to anyone. She began texting her friends in the neighborhood and asked them to call 9-1-1.

[redacted] heard loud banging and knocking on the door. She also heard McDonald say, "Shut the fuck up and be quiet." McDonald's voice was hushed and threatening. A few minutes later, McDonald yelled to her through her closed door, "[redacted] I want you to text everyone and tell them I am going to kill these three guys!" She asked McDonald if he was joking and he said he was not.

A short time later, she heard people screaming in the living room. She believed McDonald was stabbing everyone in the room. She heard the commotion move towards the front door and then she heard several gunshots. [redacted] remained in her bedroom with the door locked until deputies arrived and escorted her out of the apartment. As she walked out of her apartment, she saw McDonald laying face down in the living room with an LASD deputy standing over him. As she exited the apartment, she saw [redacted] and [redacted] laying on the floor outside the apartment covered in blood.

---

[6] [redacted] sustained stab wounds to his right thigh, inner right arm, and center chest area. He also suffered multiple cuts to his right thigh and a bite to his right thumb.

Witnesses in Apartment #[redacted]

[redacted] Statement:

Detectives interviewed [redacted] on April 8, 2014, at approximately 8:30 a.m. in her apartment, unit #[redacted] [redacted] said she was home with one of her two [redacted] when she heard a female scream and run down the hallway.[7] [redacted] second [redacted] her [redacted] had just stepped outside to give his [redacted] a parking pass so she could park inside the apartment complex.

Seconds after [redacted] heard the female scream, she heard police sirens and saw blue police lights from outside her apartment. [redacted] left their apartment to see what happened. [redacted] looked outside her window and saw deputies retrieve rifles out of their patrol cars and walk inside her apartment complex. [redacted] went to her front door and saw McDonald standing outside of unit #[redacted] wearing a black v-neck shirt. [redacted] made contact with him but did not remember what he said to her. [redacted] yelled for [redacted] to come back inside their apartment but [redacted] did not respond. [redacted] locked herself inside the apartment and turned off all the lights. A few minutes later, [redacted] and [redacted] called each other and [redacted] made her way back inside #[redacted] A deputy approached [redacted] and asked her if she knew who lived in unit #[redacted] [redacted] had the deputy come inside their apartment because she was afraid.

Once inside, [redacted] showed the deputy photos from her cell phone of [redacted] and McDonald. The deputy walked out of their apartment with [redacted] phone and returned it a few minutes later. When the deputy left, [redacted] heard other deputies yelling and then gunshots. Later on in the interview, [redacted] said she could not hear any sounds before the gunshots because she was on the phone with her [redacted][8]

[redacted] First Interview:

Detectives first interviewed [redacted] on April 8, 2014, at 9:20 a.m. [redacted] told detectives she had previously [redacted] McDonald and their [redacted] ended badly. [redacted] was good friends with both [redacted] and [redacted] and knew McDonald did not like her hanging out with either of them.

On the night of the incident, [redacted] was home with [redacted] when they both heard a female scream and run down the hallway. Once she saw police arrive at her apartment complex, she ran outside her apartment to see what happened. She went to unit #[redacted] and banged on the door, calling for [redacted] When no one answered, she turned around and saw multiple deputies with rifles pointed at her. [redacted] ran to the community balcony because the deputies did not allow her to walk back to unit #[redacted]

---

[7] [redacted] heard [redacted] running down the hall from #[redacted] towards the elevator and stairwell as McDonald chased her.

[8] [redacted] told detectives that he was outside of his apartment complex to help his [redacted] park her car when he saw LASD patrol cars arrive. [redacted] called [redacted] and told her "something's happening in the apartment, stay inside, stay inside!" [redacted] said he was on the phone with [redacted] from that point on until he heard gunshots. [redacted] did not know that [redacted] or McDonald had anything to do with LASD's presence; she was just concerned for [redacted] since they were good friends.

At 9:07 p.m, she called [redacted] to find out where he was. A male picked up the phone and sounded like he was crying. The voice said, "Why is this happening? I'm so scared!" Believing [redacted] was mocking her, she hung up the phone.[10] A few minutes later, an LASD deputy told her she could walk back to her unit. She told that deputy she knew who lived in unit [redacted]

Once she was back inside unit [redacted] another deputy knocked on her front door. He asked her if she knew who lived in unit [redacted] told him that she just spoke to [redacted] on the phone. The deputy asked her to call [redacted] again, which she did at 9:13 p.m. She handed her phone to the deputy. After a few seconds, he handed the phone back to her and told her nobody answered. The deputy left her apartment.

A few minutes later, she heard deputies outside her apartment announce their presence and order the occupants of unit [redacted] to open the door. Suddenly, she heard gunshots and ran inside her bathroom. [redacted] called a co-worker and noticed [redacted] was on the phone with her [redacted]

[redacted] Second Interview:

On April 19, 2014, detectives met with [redacted] to take her cell phone and download certain text messages and photos. During this meeting, [redacted] said that while she was in the hallway before the incident, a deputy asked her who lived in apartment [redacted] told him [redacted] Alex, and a girl named [redacted] lived there. The deputy said, "Show me [redacted] and show me Alex." [redacted] showed him photos of [redacted] and Alex on her cell phone. The deputy took her phone and "showed everybody" in her and [redacted] presence while he stood next to [redacted] in the hallway just outside their apartment. The deputy pointed to McDonald's photo and said, "That's our guy."[11]

LASD Deputies Holloway, Valdivia, and Fairbanks[12]:

On April 7, 2014, LASD Deputy Fairbanks was a [redacted] partnered with [redacted] Deputy [redacted] They, along with LASD Deputies Gerardo Valdivia and Byron Holloway, were at the LASD West Hollywood Station when they received a "Code 3" call describing an assault suspect who was armed with a knife at [redacted] Palm Avenue.[13] Fairbanks and [redacted] were designated as the handling unit. By the time Fairbanks, [redacted] Valdivia, and Holloway arrived at the location, there were several other patrol cars already on scene. [redacted] was outside in the middle of the street. [redacted] was visibly upset and crying as she told Fairbanks, [redacted] and Valdivia that her [redacted] McDonald, had a knife and was threatening her and her [redacted] inside her apartment in [redacted] told the deputies that her [redacted] was still inside the apartment. [redacted] gave her apartment key to the deputies.

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[10] Detectives later learned that McDonald had answered the phone and spoke to [redacted]

[11] [redacted] did not tell detectives she showed photos of [redacted] or McDonald during the first interview. [redacted] told detectives during the second interview that [redacted] attorneys will want to ask her about showing the deputy photos.

[12] Because all the deputies' statements were consistent, their statements were combined, unless otherwise indicated.

[13] Code 3 means an emergency call. Deputies respond to those calls with lights and sirens.

As the handling unit, Fairbanks initiated a tactical strategy with a team of deputies before entering the apartment complex. He assigned team members with specific roles should they encounter an armed suspect, a barricaded suspect, or even a hostage situation. Fairbanks said he knew incidents like this had the potential to result in very serious injury or death.[14]

Fairbanks and [redacted] led a team of deputies (including Valdivia and Holloway) up a flight of stairs to the second floor. Fairbanks directed [redacted] and another deputy to bring less lethal beanbag shotguns to apartment #[redacted] Fairbanks assigned himself and Valdivia as the designated shooters if needed. Fairbanks also assigned a team member to handle all radio communications should they encounter the armed suspect.

Once they reached the second floor landing outside the stairwell, the deputies noticed apartment #[redacted] was [redacted] from the stairwell and elevator bank.[15] They made their way down the hall to unit #[redacted] Using the key [redacted] provided, Valdivia unlocked the front door to #[redacted] and heard a female crying out for help. Eventually, the deputies found [redacted] crying and hiding in her bedroom with the door closed.

[redacted] told the team of deputies that McDonald was her [redacted] who lived down the hall in apartment #[redacted] She told them he brandished a knife and chased [redacted] out of the apartment but she did not know where McDonald was. [redacted] told the deputies that McDonald had only one male roommate. [redacted] told them that McDonald was acting delusional. [redacted] described McDonald as a male White, wearing a black t-shirt and blue jeans.

After [redacted] was safely taken out of the apartment complex, the team of deputies walked back towards apartment #[redacted] Holloway said he heard an updated description of the suspect over the radio. McDonald was described as a male White, approximately 6'2" tall, 180 pounds, wearing a black t-shirt and blue jeans.

As Fairbanks walked down towards #[redacted] peeked her head out of the door of apartment #[redacted] and told him she had previously [redacted] McDonald. [redacted] told Fairbanks that she just received a text message from [redacted] who relayed he was on the balcony of his apartment and was scared. [redacted] told Fairbanks that [redacted] was McDonald's [redacted] Fairbanks relayed this new information to his team of deputies now gathered outside #[redacted]

Holloway and Valdivia staged themselves on the left side of the front door of #[redacted] while [redacted] and another deputy were staged on the right side of the door. Valdivia banged loudly on the door, announcing "Sheriffs Department," but no one answered the door. Deputies on the street who could see apartment #[redacted] advised over the radio that the apartment was pitch-black and the front door appeared to be the only access in and out of the apartment.

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[14] Fairbanks and all the deputies who responded to the location were aware of a murder that was committed on March 29, 2014, in the same apartment complex of [redacted] in apartment #[redacted] one week prior. The crime scene was extremely gruesome. The victim was murdered with a knife and had been repeatedly stabbed and dismembered. That crime scene was discovered and investigated by LASD West Hollywood Station. The murder case was filed on April 2, 2014 under case number SA086935.

[15] The stairwell on the second floor was located next to the elevator. Apartment #[redacted] was [redacted] feet away and [redacted] from the elevator and stairwell. Apartment #[redacted] was down the hall on the same side of the building as #[redacted]

Valdivia repeatedly announced their presence and pounded on the door and walls of #[redacted] All the deputies listened closely for any noise or movement from inside #[redacted] They were unsure if they heard noises from within the apartment or from the third floor.

After several rounds of knocking on the door for approximately fifteen minutes, Valdivia and Fairbanks heard yelling and panic-stricken screaming come from within apartment #[redacted][16] As Fairbanks finished talking to [redacted] he walked towards #[redacted] The front door suddenly flew open. The inside of the apartment was completely dark. [redacted] who was covered in blood from his neck down and wearing a white t-shirt, ran out of the doorway and collapsed on the floor just outside the doorway. [redacted] was bleeding profusely from the left side of his neck. Immediately behind [redacted] was [redacted] who was a 5'9" White male wearing a black t-shirt. As [redacted] exited the apartment immediately behind [redacted] was shot in the chest, upper left arm, and in the stomach.[17] [redacted] fell and slid across the floor towards the elevator. [redacted] was also hit on the left side of his hip by a non-lethal beanbag projectile.[18] [redacted] sustained a through and through gunshot wound to his left thigh area.[19] The following are the deputies' accounts describing what happened when [redacted] and [redacted] exited apartment #[redacted]

Valdivia:

Valdivia said [redacted] came "running out, screaming, and I mean flying out of that apartment…with his hands clenched up in the air… and [his arms] moving in a stabbing motion." Valdivia saw blood on [redacted] shirt. Valdivia had his duty weapon drawn when he heard two gunshots. Valdivia then fired one round at [redacted] because it appeared that [redacted] was running directly towards Fairbanks.[20] Valdivia explained, "this other guy [redacted] was already stabbed in the neck and this other guy comes out immediately behind the other. Adding to that, the information we initially received from the roommates in #[redacted] as well as the suspect's [redacted] who said there were two males adults living in the apartment. This guy then comes running out directly towards Fairbanks."

Holloway:

Holloway saw [redacted] in a black shirt come out with his hands covered in blood and clenched above his head. Holloway said [redacted] appeared to be stabbing [redacted] as they both ran out of the apartment. When [redacted] fell on the floor, Holloway thought [redacted] was coming towards himself and Valdivia. Both Holloway and Valdivia were still standing to the side of the door. Fearing for his life as well as Valdivia's, Holloway fired one round "to stop the advancing threat."

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[16] Holloway said he heard a scuffle but did not hear voices or screaming before the door opened. [redacted] said she did not hear anything prior to the door opening.

[17] [redacted] died as a result of the gunshot wound to the chest.

[18] [redacted] shot [redacted] with her beanbag shotgun. Although she did not recall firing her weapon during the incident, her supervisor at the scene informed her that she had a fired cartridge in the chamber. Detectives later found a fired beanbag round in the hallway outside apartment #[redacted] which came from [redacted] shotgun.

[19] It is unknown which deputy shot [redacted] since there was no projectile recovered from his thigh.

[20] The projectile recovered from [redacted] chest cavity during the autopsy returned to Valdivia's firearm. It is unknown which deputy caused [redacted] additional two gunshot wounds because they were through and through wounds. There were no recovered projectiles available for analysis.

Fairbanks:
When the front door of [redacted] opened, Fairbanks was walking from [redacted] apartment into the landing area outside apartment [redacted] He was approximately eight to ten feet away from the front door and directly in front of it. Both [redacted] and [redacted] suddenly came rushing out of the apartment. It appeared to Fairbanks that [redacted] was holding [redacted] in front of him by the shirt, "like a shield, a human shield." Fairbanks believed [redacted] took two steps and then threw [redacted] to the floor in front of him. [redacted] arms and hands were outstretched and covered in blood but Fairbanks did not see any wounds on him. Fairbanks was almost directly in front of [redacted] Fairbanks believed [redacted] was armed with a knife though he did not see a knife. [redacted] took two steps towards him. In fear for his life, Fairbanks fired his handgun twice to stop the advancing threat.

[redacted] saw [redacted] directly behind [redacted] when the door opened. [redacted] appeared to be grabbing [redacted] [redacted] said it appeared to her that [redacted] threw [redacted] down to the ground. [redacted] saw [redacted] raise his hands to his chest and they were covered in blood. [redacted] heard gunshots as [redacted] fell and slid across the floor towards the elevator.

Once [redacted] was on the floor, Holloway approached him with his handgun still pointed at him. Fairbanks ordered [redacted] to put his hands behind his back. Fairbanks directed assisting deputies to handcuff [redacted] which they did.

Valdivia immediately went to [redacted] aid and asked him if [redacted] was the suspect. [redacted] shook his head "no" and said he (McDonald) was still inside.

At that moment, all the deputies heard screaming from inside apartment [redacted] It was still dark inside the apartment. Holloway remained in the hallway to assist [redacted] and [redacted] Valdivia, Fairbanks, [redacted] and several other deputies ran inside the apartment.

McDonald and [redacted] were on the living room floor wrestling. [redacted] screamed, "Help! Help!" McDonald was on the bottom and he held [redacted] on top of him. McDonald was choking [redacted] with his left hand while McDonald had his right hand inside [redacted] mouth. It appeared as though McDonald was attempting to tear [redacted] mouth apart. [redacted] eyes were rolling to the back of his head. [redacted] also had stab wounds to his torso. Valdivia and Fairbanks ordered McDonald to release [redacted] but he did not comply.

Valdivia and Fairbanks were concerned that McDonald would kill [redacted] Given that [redacted] was on top of McDonald, the deputies could not shoot McDonald. Valdivia kicked McDonald in the side numerous times but it did not phase McDonald. McDonald finally released his chokehold on [redacted] when Valdivia and Fairbanks kicked him in the head. McDonald lost consciousness for a few minutes while they escorted [redacted] to safety. When he regained consciousness, McDonald violently fought with [redacted] and Valdivia before they were able to handcuff him.[21]

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[21] McDonald was arrested and charged in case number SA087007 for the murder of [redacted] the attempted murders of [redacted] and [redacted] and torture of [redacted] On October 23, 2014,

Fairbanks knocked on [redacted] ocked bedroom door. When there was no response, Fairbanks kicked open the door [redacted] began screaming as she tried to hide under her bed. Fairbanks picked her up off the floor and she was escorted outside the apartment.

LEGAL ANALYSIS

The people have the burden of proving beyond a reasonable doubt that a killing was not justified. *People v. Banks* (1976) 6 Cal.App.3d 379, 383-384. A killing is justified if it is committed in self-defense or the defense of another. CALCRIM No. 505.

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also,* CALCRIM No. 505.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight...The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Conner* (1989) 490 U.S. 386, 396-397.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

An officer is not constitutionally required to wait until he sets eyes upon a weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun. *Thompson v. Hubbard* (2001) 257 F.3d 896, 899. "Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

Fairbanks, Holloway, and Valdivia responded to a call of a suspect with a knife. When they arrived at the apartment complex, McDonald's location was unknown. [redacted] and [redacted] were both visibly upset and afraid for their lives. They told the deputies that McDonald was their [redacted] and they had previously gotten along with him. However, on this night, McDonald was acting very aggressively and he threatened their lives with a large knife. [redacted] also told the deputies she believed McDonald was possibly under the influence of a controlled substance. Armed with this information, the deputies knew they were dealing with a dangerous suspect located somewhere in the apartment complex. The deputies were also aware that a very violent

McDonald was held to answer on all charges in Department E of the Airport Courthouse. The case is currently set for a pre-trial hearing on February 19, 2015 in Department D of the Airport Courthouse.

and gruesome murder had just been committed with a knife in the same apartment complex one week earlier.

According to Fairbanks, [redacted] told him that [redacted] text messaged her that he was on the balcony of apartment #[redacted] and was afraid. Based on that information, it was reasonable for the deputies to believe [redacted] was inside the apartment and was afraid because McDonald had returned to the apartment and was threatening him with the knife. The deputies also learned from [redacted] that McDonald had only one male roommate. There was no other indication available to the deputies that there were more male individuals inside #[redacted] at the time.

There is conflicting evidence regarding whether the deputies were shown photographs of [redacted] and McDonald. [redacted] and [redacted] during her second interview, stated that [redacted] showed a deputy, presumably Fairbanks, photographs of [redacted] and McDonald before [redacted] opened the door of unit #[redacted] None of the deputies recalled seeing a photograph of McDonald or [redacted]

When [redacted] rushed out of the door, he was bleeding profusely from his neck, indicating to the deputies that he had been stabbed. [redacted] followed closely behind and was wearing a black t-shirt and physically fit the description that [redacted] and [redacted] gave of McDonald. [redacted] was following so close behind [redacted] that it appeared that he was either chasing or holding [redacted] [redacted] hands were raised or outstretched and covered in blood, which in that moment of chaos and violence appeared to resemble a stabbing motion.

Since Valdivia had been knocking loudly on the door and announcing their presence as the "Sheriff's Department," it was reasonable for the deputies to believe that everyone inside the apartment knew the police were there to intervene. Even assuming that the deputies had seen photographs of [redacted] and McDonald prior to the door swinging open, given the stressful and rapidly evolving sequence of events, the People cannot prove beyond a reasonable doubt that the deputies did not believe [redacted] was in fact the suspect with the knife.

If a person acted from reasonable and honest convictions he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would alike have been mistaken. *People v. Jackson* (1965) 233 Cal.App.2d 639. The test of whether the officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others." *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102.

Furthermore, Fairbanks believed [redacted] was lunging towards him. Valdivia saw [redacted] appear to lunge towards Fairbanks. The People could not prove beyond a reasonable doubt that they were not in reasonable fear for their safety or the safety of others.

What transpired was a tragic series of events put in motion by McDonald. Because of McDonald's dangerous and violent actions, a reasonable trier of fact could find that he put the deputies in a situation which caused them to make a split second decision to try and save [redacted] life and protect Fairbanks from immediate harm.

Based on the foregoing, we are closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By Arisa Mattson

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c: Deputy Gerardo Valdivia, #[redacted]
Deputy Byron Holloway, #[redacted]
Deputy Michael Fairbanks, #[redacted]